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December 31, 2007

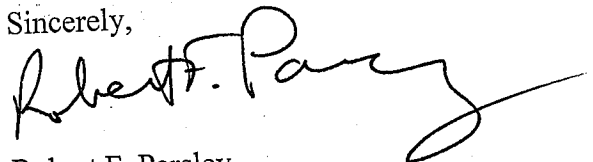
Appeal of Enforcement Order
TDEC-Office of General Counsel
20th Floor L & C Tower
401 Church Street
Nashville, TN 37243-1548

Re: Appeal of Order and Assessment, In the Matter of Rainbro, Inc., Respondent, State of Tennessee Department of Environment and Conservation, Division of Water Pollution Control, Case No. 07-099.

To Whom It May Concern:

Enclosed is the Response of Rainbro, Inc. to Director's Order and Assessment and Petition for Hearing, hereby filed in the above-captioned matter. Please contact me with any questions or concerns or to discuss the matters at issue. We would also be interested in conducting informal discussions regarding resolution of this matter.

Sincerely,



Robert F. Parsley

Cc: Mr. Dave Hammel
Leah Gerbitz, Esq.

Enclosure

RFP/dac

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PT OF ENVIRONMENT AND CONSERVATION
OFFICE OF GENERAL COUNSEL

**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF)	
)	
)	DIVISION OF WATER POLLUTION
RAINBRO, INC.,)	CONTROL
)	
)	
RESPONDENT.)	CASE NO. 07-099

**RESPONSE OF RAINBRO, INC. TO DIRECTOR'S ORDER AND ASSESSMENT
AND PETITION FOR HEARING**

Rainbro, Inc. ("Rainbro" or "Respondent"), by and through counsel, responds as follows to the Director's Order and Assessment (the "Order and Assessment") and submits its Petition for Hearing.

PARTIES

I. Respondent admits on information and belief the allegations of Paragraph I of the Order and Assessment.

II. Respondent admits the allegations of Paragraph II of the Order and Assessment.

JURISDICTION

III. Because Paragraph III of the Order and Assessment sets forth legal conclusions, no response is required.

IV. Respondent admits that it is a person as defined by T.C.A. § 69-3-103(2). The remaining allegations of Paragraph IV of the Order and Assessment are denied.

V. Because Paragraph V of the Order and Assessment sets forth legal conclusions, no response is required.

FACTS

VI. Respondent admits that there was a discharge of sewage on or about November 22, 2005 at the pump station. On information and belief, the remaining allegations of Paragraph VI of the Order and Assessment are admitted.

VII. Respondent admits that a Notice of Violation for failure to report an overflow was issued on or about November 30, 2005. Respondent states that the Notice of Violation speaks for itself. Respondent denies that it was obligated to erect signage at that time. Respondent further states that it performed subsequent additional cleanup in response to the Notice of Violation.

VIII. Respondent admits that it sent correspondence dated December 14, 2005 to the division and avers that the correspondence speaks for itself.

IX. Respondent admits that it sent correspondence dated December 14, 2005 to the division and avers that the correspondence speaks for itself.

X. In response to Paragraph X of the Order and Assessment, Respondent admits that the division sent correspondence to Respondent. Respondent avers that the correspondence speaks for itself. Respondent lacks knowledge or information sufficient to form a belief as to the division's beliefs regarding the alleged presence of fecal coliform bacteria in pond water. Respondent avers that the presence of geese at the pond may have been responsible for higher levels of fecal coliform bacteria in some sample tests. On information and belief, Respondent denies that the homeowner's association provided documentation regarding alleged overflows. To the extent the allegations of Paragraph X set forth conclusions of law, no response is required. Respondent states that it erected the requested signage in or about January 2006.

XI. As to the allegations of Paragraph XI of the Order and Assessment, Respondent admits that it sent correspondence to the division dated October 4, 2006 and avers that the correspondence speaks for itself.

XII. Respondent admits that it sent correspondence dated October 13, 2006 to the division and avers that the correspondence speaks for itself.

XIII. Respondent admits that it sent correspondence dated January 10, 2007 to the division and avers that the correspondence and attachments speak for themselves. Respondent admits that it cleaned up the overflow which had occurred on or about December 31, 2006.

XIV. Respondent admits that it sent correspondence dated March 15, 2007 to the division and avers that the correspondence speaks for itself. Respondent admits that it cleaned up the overflow which had occurred on or about March 11, 2007. Respondent states that the overflow resulted from a partial power outage.

XV. In response to Paragraph XV of the Order and Assessment, Respondent admits on information and belief that division personnel investigated a complaint as to a sewage overflow onto the ground. Respondent admits that it was contacted by the division.

XVI. Respondent admits that it sent correspondence dated March 29, 2007 to the division and avers that the correspondence speaks for itself. Respondent admits that it cleaned up the overflow which had occurred on or about March 23, 2007. Respondent states that the overflow resulted from the accidental shutdown of power by an outside vendor for the City of Chattanooga that did not report the problem.

XVII. In response to Paragraph XVII of the Order and Assessment, Respondent denies that a "Show Cause" meeting was held on or about August 9, 2007 at the CH-EFO with Respondent. Respondent states that Dave Hammel requested, on behalf of Respondent, an

informal meeting with local division personnel on or about August 9, 2007 at the CH-EFO for the purpose of discussing a Corrective Action Plan and related matters. Respondent denies that it was given notice of any administrative proceeding whatsoever by the State of Tennessee Department of Environment and Conservation or by any of its agents in relation to the August 9, 2007 meeting. Respondent further states that no administrative hearing of any kind took place on August 9, 2007 in relation to Respondent. Respondent admits that, in relation to informal discussions between Respondent and local division personnel, which took place at Respondent's request, division personnel recommended that Respondent submit a Corrective Action Plan. Respondent also admits that Respondent's consultant presented engineering plans reflecting that the pumping station was properly sized. Respondent further admits that it presented to division personnel a copy of a Temporary Injunction Order for Case No. 07C876 in the Hamilton County Circuit Court.

XVIII. Respondent admits on information and belief the allegations of Paragraph XVIII.

XIX. Respondent lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 19 of the Order and Assessment.

VIOLATIONS

XX. In response to Paragraph XX of the Order and Assessment, Respondent denies the allegations.

ORDER AND ASSESSMENT

XXI. Respondent responds to Paragraph XXI of the Order and Assessment as follows:

1. In response to Paragraph XXI(1) of the Order and Assessment, Respondent avers that it is in compliance with the Water Control Quality Act and Division Rules.

2. In response to Paragraph XXI(2) of the Order and Assessment, Respondent avers that it is in compliance with the Water Control Quality Act and Division Rules.

3. In response to Paragraph XXI(3) of the Order and Assessment, Respondent avers that it is in compliance with the Water Control Quality Act and Division Rules.

4. In response to Paragraph XXI(4) of the Order and Assessment, Respondent avers that it is in compliance with the Water Control Quality Act and Division Rules.

5. In response to Paragraph XXI(5) of the Order and Assessment, Respondent avers that it is in compliance with the Water Control Quality Act and Division Rules.

6. In response to Paragraph XXI(6) of the Order and Assessment, Respondent denies that it should be assessed the civil penalties set forth.

7. In response to Paragraph XXI(7) of the Order and Assessment, Respondent denies that it should be assessed the damages set forth.

STATEMENT OF RESPONDENT'S CONTENTIONS

XXII. All allegations set forth in the Order and Assessment not specifically admitted or denied in the foregoing Response are hereby denied.

XXIII. Respondent contends that the civil penalties and alleged damages set forth in the Order and Assessment are unreasonable and incommensurate with the alleged violations. In the alternative, Respondent contends that the civil penalties and damages should be reduced.

XXIV. Respondent contends that no Show Cause hearing or any other administrative proceeding in relation to Respondent took place on August 9, 2007. Further, Respondent was not provided due process, proper notice or an opportunity to respond to the administrative action reflected in the Order and Assessment.

XXV. Respondent contends that the order requiring the creation and implementation of a sewer overflow response plan and all civil penalties, time periods, deadlines and other requirements connected with the creation and implementation of a sewer overflow response plan be suspended pending a final decision of this action.

XXVI. Respondent contends that the order requiring the creation and implementation of a plan detailing necessary repairs, maintenance and operational procedures and all civil penalties, time periods, deadlines and other requirements connected with the creation and implementation of a plan detailing necessary repairs, maintenance and operational procedures be suspended pending a final decision of this action.

PETITION FOR HEARING

XXVII. WHEREFORE, in consideration of the foregoing, Respondent respectfully petitions for and requests a hearing before the State of Tennessee Department of Environment and Conservation Division of Water Quality Control Board. Respondent would ask the Board:

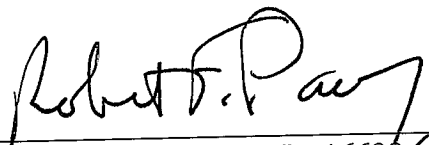
1. To withdraw the Order and Assessment as to the Respondent, or in the alternative, to delete or reduce the civil penalties and damages set forth in the Order and Assessment;
2. To suspend, pending a final decision of this action, the order insofar as it requires the creation and implementation of a sewer overflow response plan and all civil

penalties, time periods, deadlines and other requirements connected with the creation and implementation of a sewer overflow response plan; and

3. To suspend, pending a final decision of this action, the order insofar as it required the creation and implementation of a plan detailing necessary repairs, maintenance and operational procedures and all civil penalties, time periods, deadlines and other requirements connected with the creation and implementation of a plan detailing necessary repairs, maintenance and operational procedures.

Respectfully submitted,

MILLER & MARTIN PLLC

By: 

Leah Gerbitz, BPR No. 16698

Robert F. Parsley, BPR No. 23819

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1000 Volunteer Building
Chattanooga, Tennessee 37402
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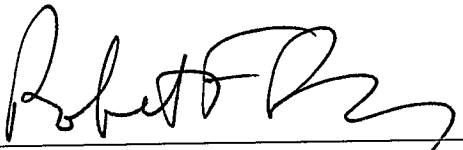
Counsel for Rainbro, Inc.

CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of this Response and Request for Hearing upon the following:

Paul E. Davis
Director, Division of Water Pollution Control
Tennessee Department of Environment and Conservation
6th Floor L & C Annex
401 Church Street
Nashville, TN 37243-1534

Dated this 31 day of December, 2007.



Robert F. Parsley